

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

WILLIAM M. TYREE, JR.

V.

CIVIL ACTION NO. 04-11430-RCL

UNITED STATES ARMY, ET AL

JUDGMENT OF DISMISSAL

LINDSAY, D.J.

In accordance with the Court's Order of October 26, 2005 allowing the motion to dismiss of the defendant United States Army, Judgment is hereby entered as follows: Judgment for the defendants dismissing this action.

October 27, 2005

/s/ Lisa M. Hourihan  
Deputy Clerk

MIME-Version:1.0

From:ECFnotice@mad.uscourts.gov

To:CourtCopy@madei.mad.uscourts.gov

Bcc:lindsay@mad.uscourts.gov,ma.ecf@usdoj.gov,mary.watson2@usdoj.gov,michael.sady@us

Message-Id:<1177917@mad.uscourts.gov>

Subject:Activity in Case 1:04-cv-11430-RCL Tyree v. United States Army et al "Order

Content-Type: text/html

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**United States District Court**

**District of Massachusetts**

**Notice of Electronic Filing**

The following transaction was received from Lindsay, Reginald entered on 10/26/2005 at 9:20 PM EDT and filed on 10/26/2005

**Case Name:** Tyree v. United States Army et al

**Case Number:** 1:04-cv-11430

**Filer:**

**Document Number:**

**Docket Text:**

Judge Reginald C. Lindsay : ElectronicORDER entered granting [25] MOTION to Dismiss for Lack of Service by United States Army and CID Agent Paul Mason. The docket and the affidavit of the plaintiff show that the plaintiff has failed to make timely service of process. The clerk shall enter judgment for the defendants in this action and shall terminate this case on the court's docket. (Lindsay, Reginald)

The following document(s) are associated with this transaction:

**1:04-cv-11430 Notice will be electronically mailed to:**

Michael P. Sady michael.sady@usdoj.gov, ma.ecf@usdoj.gov; mary.watson2@usdoj.gov

**1:04-cv-11430 Notice will not be electronically mailed to:**

William M. Tyree, Jr  
MCI Walpole  
P.O. Box 100  
South Walpole, MA 02071

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Hourihan, Lisa entered on 10/27/2005 at 11:06 AM EDT and filed on 10/27/2005

Case Name: Tyree v. United States Army et al

Case Number: 1:04-cv-11430

Filer:

WARNING: CASE CLOSED on 10/27/2005

Document Number: 32

Docket Text:

Judge Reginald C. Lindsay : ORDER entered. JUDGMENT in favor of defendants against plaintiff(Hourihan, Lisa)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:yes

Electronic document Stamp:

[STAMP dcecfStamp\_ID=1029851931 [Date=10/27/2005] [FileNumber=1178376-0] [aa8f1866287703afecf55cc2c63261d5adc47bccb4272b97ed5d9c0d10f85ae79398476860f92268f761a004d7f6c39531ec4cf1dce6fb0a4aca636f89175428]]

1:04-cv-11430 Notice will be electronically mailed to:

Michael P. Sady michael.sady@usdoj.gov, ma.ecf@usdoj.gov; mary.watson2@usdoj.gov

1:04-cv-11430 Notice will not be electronically mailed to:

William M. Tyree, Jr

MCI Walpole

P.O. Box 100

South Walpole, MA 02071

United States District Court  
District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Lindsay, Reginald entered on 12/13/2004 at 5:48 PM EST and filed on 12/13/2004

Case Name: Tyree v. United States Army et al

Case Number: 1:04-cv-11430

Filer:

Document Number:

Docket Text:

Judge Reginald C. Lindsay : electronic ORDER entered denying [2] Plaintiff's MOTION for the United States Marshal to Make Service on the Defendant CID Agent Joseph Burzenski, U.S. Army, (Retired), or in the Alternative, Order that Service of the Summons and Related Amended Complaint May be Made on the U.S. Attorney for the State of Massachusetts. To the extent that this is a motion seeking to have the Marshal's Service serve the complaint without fee, the motion is denied because the plaintiff is not proceeding in forma pauperis. The plaintiff may contact the Marshal's Service directly, pay the required fee, and have service made, or the plaintiff may seek leave to have a constable serve the papers. The court denies [6] Plaintiff's MOTION to File Two Sided Copies of Pleadings with the United States District Court in this case. Such filings may impede the scanning of the plaintiff's filings. The court denies without prejudice [7] Plaintiff's MOTION for the United States District Court Magistrate Judge to Adopt the Plaintiff's Proposed Finding of Fact and Conclusion of Law in the Plaintiff's Amended Complaint Supported by Exhibits 1-7, and Supplemental Pleadings. This motion is premature. The court denies [8] Plaintiff's MOTION to Effect Service of Amended Complaint with Exhibits 1-7 in Support and Supplemental Pleadings Served on United States District Court by Mailing Same to the Named Defendants VIA Certified U.S. Mail Return Receipt Requested. Service must be made in accordance with the Federal Rules of Civil Procedure and the court's Local Rules. (Lindsay, Reginald)

The following document(s) are associated with this transaction:

1:04-cv-11430 Notice will be electronically mailed to:

Michael P. Sady michael.sady@usdoj.gov, ellen.souris@usdoj.gov

1:04-cv-11430 Notice will not be electronically mailed to:

William M. Tyree  
MCI Walpole  
P.O. Box 100  
South Walpole, MA 02071

**COMMONWEALTH OF MASSACHUSETTS****DEPARTMENT OF CORRECTION****INMATE GRIEVANCE FORM****FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)**

Name TYREE WILLIAM Grievance# 8095 Institution MCI CEDAR JUNCTION

Commit No. W37519 Housing A 3 Date Of Incident 20050119 Date Of Grievance 20050119

Complaint There are no "local rules" of the US District Court for Mass, in the law library. I'm in both courts and cannot litigate my claims due to the lack of these local rules in the law library. I'm being beaten to death by opposing counsel who automatically expect me to know and use these rules.

Remedy Requested Immediately provide the local rules for the US Court of Appeals and US District Court of Massachusetts.

Staff Recipient Aucoin Ann Marie CO I

Staff Involved \_\_\_\_\_

Signature \_\_\_\_\_

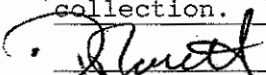
**RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR**

Date Received 20050121 Decision Date 20050125

Signature Barrett Patrick M CO I

Final Decision DENIED

Decision The Local rules for the US District Court and US Appeals Court of Massachusetts are not required or mandated reference materials in the MCI Cedar Junction law collection.

Signature  Date 1/25/05

Denied grievances may be appealed to the Superintendent within 10 working days of Institution Grievance Coordinator's decision.

**INMATE RECEIPT**

Name TYREE WILLIAM Institution MCI CEDAR JUNCTION

Commit No. W37519 Grievance# 8095 Date Received 20050121

Signature. Aucoin Ann Marie CO I



**COMMONWEALTH OF MASSACHUSETTS****DEPARTMENT OF CORRECTION****INMATE GRIEVANCE FORM****FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)**

Name TYREE WILLIAM Grievance# 9786 Institution MCI CEDAR JUNCTION  
 Commit No. W37519 Housing A 3 Date Of Incident 20050412 Date Of Grievance 20050412  
 Complaint Previously Sgt. Pat Mulvey interviewed me and directed me not to have any further contact with U.S. Army defendant's Joseph Burzenski, et al., after I attempted U.S. mail certified service on him. I ceased all contact per order of staff Sgt. Mulvey.

On 4.12.05, Asst. U.S. Attorney Michael Sady filed to dismiss this action, U.S. District Court 04-11430-RCL, because I did not contact the relevant parties/officers pursuant to Rule 4(i)(1)(c); 4(i)(2), which included Burzenski, Paul Mason and the U.S. Army.

Remedy Requested Please notify me in writing who ordered Sgt. Mulvey to remove me from my housing unit, interview me, return me to my housing unit in front of witnesses, and direct me not to have further contact with persons in 04-11430-RCL.

Staff Recipient Sullivan Daniel CO II

Staff Involved Mulvey Patrick M CO II

Signature \_\_\_\_\_

**RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR**

Date Received 20050413 Decision Date 20050516

Signature Sullivan Daniel CO II

Final Decision DENIED

Decision The IGC has spoken with Sgt. Mulvey. Sgt. Mulvey recalls the incident you described as occurring approximately one (1) year ago. As such and pursuant to 103 CMR 491.08 General Requirements

(4) A grievance shall be filed within ten working days of the actual incident or situation or within ten working days of the inmate's becoming aware of the incident or situation. Whenever a grievance is returned pursuant to 103 CMR 491.10(2) for improper format, the inmate shall have an additional three working days from the date of receipt to file a grievance in proper format.

Signature \_\_\_\_\_

Date 5/16/05

Denied grievances may be appealed to the Superintendent within 10 working days of Institution Grievance Coordinator's decision.

**INMATE RECEIPT**

Name TYREE WILLIAM

Institution MCI CEDAR JUNCTION

Commit No. W37519

Grievance# 9786

Date Received 20050413

**COMMONWEALTH OF MASSACHUSETTS****DEPARTMENT OF CORRECTION****INMATE GRIEVANCE APPEAL FORM****FORWARD TO SUPERINTENDENT**

#9780

<b>Name</b>	TYREE WILLIAM		<b>Institution</b>	MCI CEDAR JUNCTION	
<b>Number</b>	W37519	<b>Housing</b>	A 3	<b>Appeal Date</b>	20-MAY-2005
				<b>Date Of Grievance</b>	12-APR-2005
				<b>Appeal Received Date</b>	23-MAY-2005

**Appeal** I, William M. Tyree, on oath state: (1). Sgt. Mulvey spoke to me in May 2004. He ordered me not to have any contact with any of the defendants in Tyree V. U.S. Army, Et al.; (2). On April 12, 2005 when the grievance in this case was filed, I suffered the injury that was set in motion by Sgt. Mulvey being ordered to speak to me; (3). The actual injury was through the action of Assistant United States Attorney, (AUSA), Michael P. Sady, who did serve on me on April 12, 2005 a Motion To Dismiss for Improper Service on the Defendants in Tyree V. Army, ET al., because I did not contact the defendants as I was required to do; (4). Based on the Direct Order that I was given by Sgt. Mulvey in May 2004, I did not contact the defendants and on April 12, 2005, I was injured by the order from Sgt. Mulvey when I failed to contact the Defendants; (5). I can't grieve the action of Sgt. Mulvey and ask for the name of the person that contacted Sgt. Mulvey and asked him to order me not to contact the defendants in Tyree V. U.S. Army, Et al., until I was injured by the order of Sgt. Mulvey. That injury didn't occur until April 12, 2005, and that is why the grievance was filed in April 2005, and not May 2004. In May 2004, Sgt. Mulvey through his order, had done nothing I could complain about as I had not been injured. Once I was injured in April 2005, I have a claim and I grieved it. Therefore the time limits were met and I am entitled to the relief that I seek.

Signed under pains and penalties of perjury on this date, May 20, 2005.

**Remedy Requested** Have Sgt. Mulvey provide me the name of the person who contacted him and directed him to order me to cease all contact with the defendants in Tyree V. U.S. Army, Et al., so that name may be provided to the U.S. District Court to show the reason why I did not contact the defendants after May 2004. I was given an order from Sgt. Mulvey that resulted in an injury to me on April 12, 2005, and I hold the person that gave Sgt. Mulvey the order responsible, unless the person who spoke to Sgt. Mulvey wants to tell me who told them to tell me to back off. I want the person who gave the initial order.

**Staff Recipient** Sullivan Daniel CO II

**Signature**

**DECISION BY SUPERINTENDENT**

**Appeal Received Date** 23-MAY-2005 **Decision Date** 05-JUL-2005 **Decision** DENIED

**Decision By** Nolan David F SUPERINTENDENT

**Reasons** Sergeant Mulvey has informed me that he does not recall the name of the individual; however, he said it was a representative from the U.S. Attorney's Office. Any further inquiries should be addressed directly with the U.S. Attorney's Office.

**Signature**

**Date**

**INMATE RECEIPT**

<b>Inmate's Name</b>	TYREE WILLIAM	<b>Institution</b>	MCI CEDAR JUNCTION
<b>Number</b>	W37519	<b>Appeal Received Date</b>	23-MAY-2005
<b>Staff Recipient</b>	Sullivan Daniel CO II		
<b>Superintendent's Signature</b>			

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MASSACHUSETTS

WILLIAM M. TYREE	)	C.A. 04-11430-RCL
P.O. BOX-100	)	
SOUTH WALPOLE, MA. 02071	)	
PLAINTIFF, Pro se	)	PLAINTIFF'S/APPELLANT'S
	)	MOTION TO STAY APPEAL AND
V.	)	FILING FEE ON APPEAL AFTER
	)	DOCKET NUMBER IS ASSIGNED
	)	TO THIS APPEAL PENDING THE
UNITED STATES ARMY	)	OUTCOME OF DOCKET NO. 04-2164
CID AGENT PAUL MASON (Retired)	)	IN RE TYREE IN THE U.S. FIRST
CID AGENT JOSEPH BURZENSKI (Retired)	)	<u>CIRCUIT COURT OF APPEALS.</u>
DEFENDANTS	)	
U.S. Department of Justice	)	
John J. Moakley Courthouse	)	
1 Courthouse Way, Suite 9200	)	
Boston, Massachusetts 02210	)	
(Main phone: 617-748-3100)	)	
<u>Counsel for Defendants</u>	)	

Comes now the Plaintiff, William M. Tyree, Pro se, who moves this United States Court of Appeals for the First Circuit, to allow this Motion and enter the following order that:

(1). the above appeal of Tyree v. U.S. Army, Et al., will be stayed;

(2). the filing fee required to bring this appeal of Tyree v. U.S. Army, Et al., will be stayed;

(3). that the reason to stay this appeal is an ongoing Petition For Writ Of Mandamus pending in the U.S. First Circuit Court of Appeals, Docket No. 04-2164, filed August 27, 2004, which seeks the reinstatement of the Plaintiff/Appellant, William M. Tyree, back in the U.S. Army. If that case (04-2164) is successful, William Tyree would be barred from litigating a matter against the U.S. Army, as he (Tyree) would be back in the Army and could not litigate any claim against the Army under the so called Feres



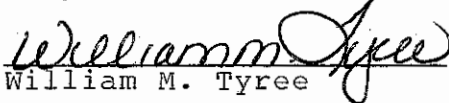
Page two

Doctrine.

For this reason the appeal and filing fee for the appeal should be stayed and the same is requested pending the outcome of the Docket No. 04-2164.

Respectfully submitted,

October 28, 2005

  
William M. Tyree  
Pro se  
P.O. Box-100  
S. Walpole, MA. 02071